

**Internal Revenue Service
District Director**

Department Of The Treasury

Person To Contact: [REDACTED]

Telephone: [REDACTED]

Refer Response To: [REDACTED]

CERTIFIED MAIL

NOV 28 1990

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

You were incorporated on [REDACTED] under the laws of the State of [REDACTED]. Article Seventh of your Articles of Incorporation provides for the distribution of your assets at the time of the dissolution of your affairs or the abandonment of your activities. This articles states that your remaining assets shall be "distributed, transferred, conveyed, delivered and paid over to any other charitable organization of this or any other State, associated with or connected with the corporation to which the property previously belonged."

Your activities are primarily to provide pastoral counseling to individuals, couples, and families. Fees will be charged for the counseling services rendered on a sliding-scale basis. The usual rate for such fees will be \$[REDACTED] per hour, which will be reduced for low-income or indigent clients. Your receipts will be derived primarily from fees charged for counseling services. Your expenditures will relate primarily to compensation, rent, and telephone services.

Your incorporator, [REDACTED], has designated himself, his wife, and his son to serve as your officers and directors. Your incorporator is a certified counselor, and has worked in and directed a pastoral counseling center for several years. The counseling services that you will offer will initially be performed by your incorporator, with additional counselors to be added during the following five years. You will compensate your incorporator for his services as an officer and for his counseling services.

[REDACTED]

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides that an organization is not organized or operated exclusively for one or more of the purposes specified within Code section 501(c)(3) unless it serves a public rather than a private interest. It is therefore necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator of the organization, or the family of the organization's creator.

Revenue Ruling 69-266, 1969-1 C.B., page 151, describes an organization that was formed and controlled by a doctor of medicine. The organization 'hired' the doctor to conduct 'research programs', which consisted of the doctor examining and treating patients. Prevailing fees for the services rendered were charged by the organization. In return for the doctor's services, the organization compensated the doctor with a salary, vacation, pension plan, health and life insurance, and 'scholarships' for his children. The organization's operations did not differ significantly from the private practice of medicine for profit and served the private interest of its creator rather than a public interest. It was therefore held that the organization was not exempt under Code section 501(c)(3) due to it being operated by its creator as an attempt to reduce his personal Federal income tax liability.

The relationship criteria specified within the dissolution provision of article Seventh of your Articles of Incorporation does not meet the organizational test of Code section 501(c)(3) because it has the same effect as naming a beneficiary. If no organization exists at the time of dissolution that is both a qualified charity and is 'in some way associated with or connected with' the dissolving organization, the effect is to void the dissolution clause. The dissolving organization must therefore name a beneficiary to distribute its assets to that will be either a qualified charitable organization or an unqualified associate organization. This is not a dedication of assets that meets the 'organized exclusively' provisions within Regulations section 1.501(c)(3)-1(b)(4). You therefore do not meet the organizational test of Code section 501(c)(3).

In addition to your not meeting the organizational test requirements of Code section 501(c)(3), the facts and circumstances indicate that your net earnings inure to the benefit of your incorporator, [REDACTED]. This is so due to the lack of an arm's length transaction between you and your incorporator in determining the compensation paid to your incorporator. All compensation paid by you will be determined by your incorporator and his family who he appointed as your directors.

[REDACTED]

Your operations are also similar to those of the organization described within the above revenue ruling. This is so due to counseling being a service that is commercially offered on a fee-paid basis. Your organization's "hiring" of your incorporator to perform services as an officer and as a counselor is not significantly different from the hiring practices of an organization engaged in the enterprise of offering counseling services to the public on a commercial basis.

As a result of your net earnings inuring to the benefit of your incorporator and your operations being identical to those of an organization that offers counseling services on a commercial basis, you are not operated exclusively within the meaning of any of the purposes specified within Code section 501(c)(3). You therefore do not meet the operational test of Code section 501(c)(3).

Because you do not meet both the organizational and operational tests required under Code section 501(c)(3), you do not qualify for exemption from Federal income tax under that Code section. In accordance with this determination, you are a taxable entity and are required to file Federal income tax returns on Form 1120. If you do not accept our findings, we recommend that you request a conference with a member of our Regional Office of Appeals. Your request for a conference should include a written appeal giving the facts, law, and any other information to support your position as explained in the enclosed Publication 892. You will be contacted to arrange a date for a conference. The conference may be held at the Regional Office or, if you request, at any mutually convenient District Office. If we do not hear from you within 30 days from the date of this letter, this determination will become final and a copy of this letter will be sent to the appropriate State officials in accordance with section 6104(c) of the Code.

If you do not protest this proposed determination under Code section 501(c)(3) in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code states, in part, that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States

[REDACTED]

for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service*.

Sincerely yours,

[REDACTED]
District Director

Enclosure: Publication 892

cc: State Attorney General [REDACTED]